

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kevin L. Parsons Art Unit.: 3677
Serial No.: 10/684,970 Confirmation No.: 9957
Filed: October 14, 2003 Examiner: Andre L. Jackson
For: LEVERAGED BATON CAP
Attorney
Docket No.: 90054

DECLARATION UNDER 37 C.F.R. § 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, KEVIN L. PARSONS, depose and state as follows:

1. I am the Kevin L. Parsons named as the applicant in the above-identified patent application (hereafter the "subject application").
2. I am the Chairman and Chief Executive Officer of Armament Systems and Procedures, Inc. (ASP), the assignee and owner of the subject application and the invention disclosed therein.
3. I have been closely involved in the prosecution of the subject application and have reviewed with counsel the non-final Office Action, dated November 14, 2005, and particularly the Examiner's rejection of claims 1-19 then pending in the application as being unpatentable over U.S. Patent No. 5,728,003 to Hustad in view of U.S. Patent No. 5,188,362 to Ashihara. I have also reviewed the claims as amended in the Amendment responsive to the non-final November 14, 2005 Office Action filed in the PTO on May 12, 2006.

4. At the outset, I wish to thank Examiner Andre L. Jackson for the telephone interview courteously granted on March 24, 2006, commencing at 10:00 a.m. in which I participated along with my counsel, Richard L. Wood, from the offices of Welsh & Katz, Ltd. in Chicago, Illinois.

5. I make this Declaration for the purpose of traversing Examiner Jackson's position that the subject matter defined in claims 1-19 as rejected in the November 14, 2005 Office Action is unpatentable over the Hustad patent in view of Ashihara. More particularly, I respectfully traverse Examiner Jackson's statement that "it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the end piece device of Hustad to incorporate the specific shape of the end cap as taught by Ashihara to provide an improved ergonomic end piece being sized to receive a user's finger in wrapped relation about a neck portion so that the finger is captured between a knob and a distal end such that a baton can be held firmly adjacent a proximal end of the baton with at [sic--a] steadfast and leveraged grip." My statements made herein apply equally to the claims as amended in the Amendment filed May 12, 2006.

6. I initially point out that the rejected claims call for the reduced diameter circumferential groove in the unitary body of the claimed end cap as being sized to receive the little finger of the user's hand which determines the proper gripping orientation of the hand on the leverage end cap during use, with the remaining fingers and thumb gripping the distal end of the end cap and at least the pointing finger of the hand gripping the handle portion of the baton. The specific manner in which the leverage end cap is gripped is important to achieving the object of the leverage end cap in association with a baton; namely, increasing the fulcrum length of the

baton and thereby its striking force over conventional hand-gripping of only the cylindrical handle position of the baton.

7. Prior to addressing the Hustad and Ashihara patents, I will briefly review the background of my invention in the claimed leverage end cap as explained during the March 24, 2006 telephone interview. ASP is in the business of making law enforcement equipment which is sold in approximately 77 countries. Its customers are primarily law enforcement personnel such as police officers, secret service agencies and drug enforcement agencies. ASP has received over 100 patents on various law enforcement equipment including expandable batons which ASP has manufactured and sold since the early 1990's.

8. The leverage end cap as defined in the claims now pending in the application met a substantial need expressed by law enforcement personnel. A trend experienced in law enforcement is that more and more individuals are coming into law enforcement that do not have the upper body strength that traditional relatively large male dominated police officers have. Thus, there are people serving in law enforcement that are not as big and strong but yet face the same significant control issues as they deal with assailants. As a result of this trend, ASP began receiving requests from law enforcement personnel for smaller and lighter equipment so that smaller police officers, many of whom are female and not as large as the traditional male police officers, could readily manipulate their equipment and effectively carry out their law enforcement duties without endangerment to themselves in crisis situations. This need lead ASP to design and manufacture a series of batons. For example, the baton made for the U.S. secret service is a very small baton, only 16 inches in length when expanded. It was verified that if a lever is made shorter in length, which is essentially what a baton is, then the baton has less striking force potential. ASP's customers kept asking what ASP could do to make the shorter

batons work better; that is, exhibit similar striking characteristics as longer, heavier batons. This lead to a review of existing literature relating to the martial arts which revealed that there is a fairly dramatic difference between how samurai swords as used in the Orient work, and how traditional swords, such as broad swords and the like, were used by other people. It was discovered that a significant difference in use resulted from how the fulcrum point for the sword was positioned. This lead to development of the leverage end cap as defined in claims 1-10, 12-16 and 18-22 now pending in the subject application. This in turn lead to a large number of law enforcement agencies using the leverage end cap where a relatively small short length baton, such as capable of expanding to 16 inches in length but collapsible to approximately 6 inches as its carried length, can be used in situations requiring a striking potential equal to significantly longer length batons. That is accomplished because the leverage end cap as defined in the pending claims has an annular generally U-shaped concave groove of reduced diameter in which the user places his/her little finger of the gripping hand in abutting relation with the enlarged end knob so that the location of the little finger is the fulcrum location when you strike with the baton. This is contrasted with using the first finger and the thumb as the fulcrum point when conventionally gripping a baton handle portion with one's palm, fingers and thumb gripped about the cylindrical baton handle portion. The increased leverage enables the user to generate significantly more power.

9. ASP has experienced very significant commercial success with the leverage end cap as defined in the claims of the subject application. ASP has sold approximately 2½ million expandable batons that are in use by law enforcement and security agencies. The desired striking force of a smaller size (length) baton can be readily increased by removing the conventional end cap on the baton and mounting a leverage end cap as defined in the subject application claims

onto the end of the baton to thereby increase the striking potential of the baton. ASP has sold over two million (2,000,000) leverage end caps as defined in the claims pending in the subject application.

10. Turning now to the Examiner's rejection of claims 1-19 based on the Hustad and Ashihara patents, and addressing first the Hustad patent, the Examiner has referred to FIGS. 1 and 2 of the Hustad patent in support of his position that the intermediate shaft 16 could be used to receive the user's little finger. However, the difficulty with the Examiner's position is that if one were to wrap a little finger about the intermediate shaft 16 and then tried to grip the baton handle grip area 46 with one or more fingers, the enlarged knob or base 14 would be engaged by the palm of hand. This would effectively expand the user's hand and inhibit trying to wrap the little finger snugly around the intermediate shaft 16. In addition to being very uncomfortable, the enlarged base 14 of Hustad would make it difficult at best to use the little finger as the fulcrum point for increasing the striking force of a relatively short baton. On the other hand, the claims of the subject application call for the leverage end cap as having a reduced diameter concave annular groove disposed between and contiguous to the enlarged knob and the opposite generally cylindrical end of the end cap that connects to and generally matches the diameter of the handle end of the baton so that a natural gripping action is obtained with the thumb and first three fingers of the hand gripping at least portions of the baton and cylindrical end of the leverage end cap. The little finger thereby allows the user to rotate and torque the hand with the little finger acting as the fulcrum point to generate the power.

11. Another very significant problem with the Hustad pressure point device is that it provides very little protection or backup for the little finger if gripped as Examiner Jackson suggests. The only structure in the Hustad device that could abut the outside edge of the user's

little finger when wrapped about the intermediate shaft 16 is the relatively small diameter bulbous end 12. The Hustad patent states at column 3, lines 1-15, that the cross sectional diameter of the bulbous end 12 is preferably less than 2.0cm, and preferably has a cross section which is smaller than the cross section of the elongated member (baton) 11 adjacent the end piece 10. In a situation where the gripping hand is perspiring or wet, there is a real likelihood of inadvertently releasing the baton. Thus, not only would gripping the Hustad pressure point device as suggested by the Examiner be uncomfortable, but would not provide sufficient backup to the little finger so as to prevent release of the baton during stressful use against an aggressive assailant.

12. As noted, the Examiner's rejection is based on the Hustad patent in view of the Ashihara patent. The Ashihara patent discloses a side handle or crosshandle baton. The Ashihara baton is designed to be gripped around the crosshandle which is secured perpendicular to the linear baton intermediate its length. The purpose of side or crosshandle technology is to allow the baton to swing about the axis of the crosshandle while utilizing a protective hand guard to protect the knuckles. The Ashihara patent expressly states that a primary concern of the Ashihara crosshandle baton is to protect the gripping hand of the user by means of a handguard. Of equal significance is that Ashihara specifically teaches that the upper relative rotational member 8 has an outer circumferential surface 8c which "is gripped with a thumb and a forefinger being positioned there around." (Column 7, lines 31-34, of Ashihara). This is clearly illustrated in FIGS. 7(a), 7(b), 8(a) and 8(b), 9(b) and 9(d) of Ashihara in which the remaining fingers of the gripping hand wrap about the static member 9 and rotational lower member 7 of the Ashihara crosshandle. This is contrasted with the purpose of the claimed leverage end cap to increase the fulcrum length of the baton. The claimed leverage end cap is interchangeable with a

standard baton end cap to increase the striking potential of substantially any known baton, as opposed to the Ashihara crosshandle that is fixed transversely to the baton intermediate its length and does teach or suggest removing a single element (8) from the crosshandle for cooperation with the end of the baton as a means of increasing the fulcrum length or movement of the baton and thereby generating more striking power.

13. ASP has found in testing batons by a ballistic pendulum force measuring test technique that Ashihara crosshandle type batons have less striking potential than a traditional straight baton having a leverage end cap thereon as called for in the claims of the subject application. There is a dramatic difference in the relationship between the gripping portion of ASP's claimed baton leverage end cap and the handle of the baton. Comparing the relationship between the gripping portion of the claimed leverage end cap with the crosshandle of the Ashihara baton, the ASP claimed leverage cap has a significantly different gripping configuration and area than the Ashihara crosshandle. One would expect that a larger grip would provide a better grip. Yet the ASP designed smaller grip leverage end cap produces a better grip. The Ashihara patent clearly teaches away from the claimed leverage end cap invention and, in my many years of work with law enforcement equipment, would not suggest to one of ordinary skill in the art to modify the Hustad pressure point device as suggested by Examiner Jackson. Again, in use, the ASP claimed leverage end cap places the little finger, and thus the fulcrum point, in a position longitudinally spaced from the end of the baton for leverage. Gripping the crosshandle of the Ashihara baton places the little finger near the mid-portion of the baton, thus decreasing the leverage as compared to gripping the end of the Ashihara baton itself.

14. For the foregoing reasons, it is my opinion that one of ordinary skill in the art would not have been lead by the Ashihara crosshandle baton to modify the pressure point device

of Hustad to achieve the leverage end cap defined in the pending claims as suggested by the Examiner, absent what I am advised is improper use of the disclosure and claims of the subject application as a road map.

15. All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further, these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements, may jeopardize the validity of U.S. patent No. 6,190,018.



Kevin L. Parsons

Date: June 11, 2006

Chairman & CEO
Armament Systems and Procedures, Inc.